

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

LESTER RAY MORGAN, #33486-177, §
§
Movant/Defendant, § v. § Civil Action No. 3:07-CV-1177-L
§ No. 3:05-CR-0079-L
UNITED STATES OF AMERICA, §
§
Respondent/Plaintiff. §

ORDER

Before the court is the Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody, filed June 28, 2007. The court referred the motion to vacate to United States Magistrate Judge Irma C. Ramirez, and she entered her findings, conclusions and recommendations on October 25, 2008. After considering the magistrate judge's findings and recommendations, the motion, response, reply, record, and applicable law, the court **denies** the Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody.

Movant Lester Ray Morgan ("Morgan" or "movant") pleaded guilty to possession with intent to distribute and distribution of five grams or more of a controlled substance, cocaine base, in violation of 18 U.S.C. § 841(a)(1). Movant was sentenced to 180 months imprisonment. His appeal to the United States Court of Appeals for the Fifth Circuit was dismissed after appellate counsel filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967). Movant timely filed this motion on June 29, 2007, raising three grounds: (1) the waiver of appeal was not knowing and voluntary; (2) the court committed plain error by elevating his sentence under the career offender provisions of the United States Sentencing Guidelines; and (3) he received ineffective assistance of counsel.

The magistrate judge found that movant's guilty plea was knowing and voluntary and that the first ground of his motion should be denied. With respect to the alleged sentencing error, the magistrate judge determined that movant cannot bring such a claim on collateral review. Finally, the magistrate judge determined that movant failed to show that he received ineffective assistance of counsel. Accordingly, she recommends that the court deny the motion.

The court has reviewed the magistrate judge's findings and conclusions, the record, and the applicable law, and determines that the findings and conclusions are correct. They are therefore **accepted** as those of the court. The court **denies** the Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody.

It is so ordered this 14th day of November, 2008.



Sam A. Lindsay
United States District Judge